cable power of attorney voluntarily. I would add that I did not find any evidence of a special relationship or active confidence in this case whereby the provisions of section 111 of the Evidence Act should be applied.

Finally, counsel for the plaintiffs submitted that assuming the assignment was valid, then the interests of the late Ratnavale had passed over to the second defendant and in support of this contention he referred to the following paragraph in pages 515 and 516 of Vol. 4 of *Halsbury's* Laws of England: —

"1063. *Death.* Upon the death of an individual, all choses in action to which he was entitled pass as a general rule to his personal representative. If he dies intestate, until an administrator is appointed, all his property vests in the President of the Probate, Divorce and Admiralty Division. There are, however, some exceptions. For instance, the interest that the deceased person has in a chose in action jointly with another person does not pass to his personal representative, but to the other joint holder, unless they are entitled as partners in trade, in which case the beneficial interest in the deceased person's share passes to his executor, but the right to recover it passes to the surviving partner."

In reply, Mr. Davidson referred to the words "jointly and severally" used in Exhibit "B" and submitted that there may be joint and several obligations, but not rights. He quoted *Slingsby's Case,*[10] where it was held *inter alia* that an interest cannot be granted jointly and severally, but a power of authority may be joint and several. The question here, counsel for the first defendants submitted, was whether the assignment created joint interests with right of survivorship or did it create interests in common? He pointed out that words of severance had been used in the power of attorney in question and referred to the case of *Morley* v. *Bird,*[11] where it was held that an interest given to two or more either by way of legacy or otherwise is joint, unless there are words of severance, as "equally among", etc., or an inference of that sort arises in equity from the nature of the transaction; as in partnerships, a joint mortgage, etc. In this case, I found that it had been recited in Exhibit "B" that the $3,000/- had been jointly paid by the late Ratnavale and the second defendant, and by the use of words of severance such as "severally" and "to hold unto them in equal shares", an intention had been shown to make the donor's assigned share in the partnership or syndicate interests in common. Reference was also made to the case of *Perkins* v. *Baynton,*[12] where it was held that a money legacy to two (not executors) "jointly and between them" — is not a joint-tenancy; but is a tenancy in common, the words meaning the same as "to be equally divided between them". This authority, of course, strengthened the view that in this case there was a tenancy in common and that on the death of Ratnavale, his half share in the interests of the late Govindasamy in the partnership assigned to them did not pass over to the second defendant as claimed by counsel for the plaintiffs.

Lastly, I agreed with counsel for the first defendants that there was no evidence at all of damages suffered by the plaintiffs and in the circumstances of the case, I therefore dismissed their suit and, in allowing the counter-claim of the first defendants, declared that they, as against the plaintiffs, were entitled to an equal share of the late Govindasamy's share deriving, whether by return of capital, payment of profits or otherwise, from the said syndicate. I also awarded the first defendants the costs of this action.

Order accordingly.

Solicitors: *Subbiah & Co.; Lewis & Co.*

MRS. KOK WEE KIAT v. KUALA LUMPUR STOCK EXCHANGE BHD. & ORS.

[O.C.J. (Abdul Hamid J.) May 30, September 8 and December 23, 1977]

[Kuala Lumpur — Civil Suit No. 1609 of 1974]

Practice and Procedure — Application that particulars filed in reply to defence be struck out — Particulars — Particulars setting out evidence — Libel — Conspiracy to defame — Whether claim of conspiracy to defame has merged with claim for libel — R.S.C. 1957, O. 19 rr. 22 and 27, O. 25 r. 4.

Torts — Libel — Conspiracy to defame — Whether claim of conspiracy to defame merged with claim for libel.

There were two applications in this case (a) one by the ninth defendant for an order that the plaintiff's action be struck out and (b) by the second to eighth defendants for an order that the plaintiff's claim for damages for conspiracy to publish a defamatory statement of and concerning the plaintiff be struck out. In both applications there was a common prayer that the particulars filed in reply to the defence of the second to ninth defendants be struck out.

It was agreed that (1) the claim founded on conspiracy to defame had merged with the claim for libel and (2) that the particulars filed by the plaintiff were in contravention of Order 19 rule 22 in that evidence by which the facts were to be proved was pleaded.

Held: (1) the claim to "conspire to defame" had merged with the claim for libel and therefore the application that the allegations as to conspiracy to defame in the statement of claim should be struck out should be allowed;

(2) only material facts must be pleaded but not evidence by which they were to be proved. A substantial part of the particulars given by the plaintiff were clearly evidence and ought to be struck out;

(3) the plaintiff be ordered to file fresh particulars which should be in strict compliance with Order 19 rule 22 of the Rules of the Supreme Court.

Cases referred to:-

(1) *Ward* v. *Lewis & Ors.* [1955] 1 W.L.R. 9.

(2) *Phillips* v. *Phillips & Ors.* (1878-9) 4 Q.B.D. 127.

(3) *Bruce* v. *Odhams Press Ltd.* [1936] 1 K.B. 697.

CIVIL SUIT.

Wong Weng Kwai for the plaintiff.

Eugene K.H. Lye for 2nd to 8th defendants (except 4th defendant).

Ng Ek Teong (*V. Ponniah* with him) for the 9th defendant.

Abdul Hamid J.: There are two applications be-before this Court, (a) that of the 9th defendant for an order that the plaintiff's action against him be struck out, and (b) by the 2nd, 3rd, 5th, 6th, 7th and 8th defendants for an order that the plaintiff's claim against them in paragraph 2 of the amended statement of claim and on the indorsement of claim in the writ of sum-

mons for damages for conspiracy to publish a defamatory statement of and concerning the plaintiff be struck out.

In these applications there is a common prayer that the particulars filed in reply to the defence of the 2nd to 9th defendants be struck out.

I shall first of all deal with the 9th defendant's application. In the affidavit supporting the application it is alleged that the plaintiff was not acting *bona fide* in instituting the suit and that this was part of a scheme to malign or bring to disrepute the former directors and committee and General Manager of the Kuala Lumpur Stock Exchange Berhad (I shall hereafter call "the KLSE (B)"). It is said that the plaintiff defamed the committee and staff of the Stock Exchange in an article called "Self Regulation and a Stock Exchange", and this article was given to the *New Straits Times* and they published a condensed version in the Business Times section of November 30, 1974. The publication in the *New Straits Times* led the Singapore Investor to publish a commentary in its issue on December 2, 1974 stating that the KLSE (B) and its staff were corrupt. It is also alleged that the plaintiff then Research and Publication Manager of the KLSE (B) attempted to publish the article in the KLSE (B) monthly gazette. The committee stopped her from doing so and took over the work of publishing and printing the gazette. In consequence the plaintiff took out this suit with a view to further malign the committee and the applicant. It is further alleged that the particulars in the reply are irrelevant, scandalous, prolix, vexatious and an abuse of the process of the court. It is contended that this was a further step in the plaintiff's campaign to injure the defendants. The particulars were served on the applicant's solicitors Messrs Ng Ek Teong & Partners at 4.00 p.m. on June 13, 1975 and on June 15, 1975 a full and detailed report appeared in the *New Straits Times*.

As a result of this publication the Attorney General is reported to have stated in the *New Straits Times* issue of June 24, 1975 that the allegations ought to be investigated by the National Bureau of Investigation. It is also revealed that subsequently copies of the publication were delivered to most of the stockbroker firms in West Malaysia. The applicant contends that the pleadings in this suit are being deliberately used as a vehicle for defaming the defendants and are patently part of a scheme to malign.

The application is made pursuant to Order 19 rule 27 R.S.C. which reads —

"The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action;"

and Order 25 rule 4 which allows the court or a judge to order

"any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just."

Mr. Ng Ek Teong counsel for the 9th defendant submitted that the pleadings were so confused that they ought to be struck out or substantially amended. He pointed out that the statement of claim contains a combination of allegation of conspiracy to defame and libel. It is the applicant's contention that it is not open to the plaintiff in her claim for libel against the 2nd to 9th defendants to plead "conspire to defame" and "to defame" in one pleading as the two allegations are merged and therefore the conspiracy to defame should be struck off. In support of the contention Mr. Ng Ek Teong cited the case of *Ward* v. *Lewis & Ors.*[1] where in an action for slander the plaintiff, "an osteopath, in answer to the defendants' request for particulars of damage replied that no special damage was alleged. In his pleadings he alleged conspiracy between the defendants 'wrongfully to make and publish false and malicious oral and written statements defamatory of' [him]. That allegation of conspiracy was struck out by the master on the ground that it omitted any allegation of damage — an essential averment."

Gerrard J. confirmed the master's order and the defendants appealed. On appeal it was held (at page 10),

"that the allegation of conspiracy failed for the reason that no nexus was alleged between the falling off in the plaintiff's practice and the alleged slanders."

Denning L.J. at page 11, dealing with the allegation of conspiracy said —

"on the conspiracy allegation it is only necessary to allege conspiracy to injure or to do an unlawful act, and then to allege damage without alleging the connexion between the two. I cannot agree. It is important to remember (and we had a case only last week on this point) that when a tort has been committed by two or more persons an allegation of a prior conspiracy to commit the tort adds nothing. The prior agreement merges in the tort. A party is not allowed to gain an added advantage by charging conspiracy when the agreement has become merged in the tort. It is sometimes sought, by charging conspiracy, to get an added advantage, for instance in proceedings for discovery, or by getting in evidence which would not be admissible in a straight action in tort, or to overcome substantive rules of law, such as here, the rules about republication of slanders. When the court sees attempts of that kind being made, it will discourage them by striking out the allegation of conspiracy, on the simple ground that the conspiracy adds nothing when the tort has in fact been committed."

Mr. Ng Ek Teong drew my attention to paragraphs 9 and 10 of the Statement of Claim and submitted that in the allegation of conspiracy there is no allegation as to any damage resulting from that conspiracy. He then referred to Anand & Sastri's Law of Torts 3rd edition page 920 as to the elements necessary to constitute conspiracy. It is his submission that there must be express or implied agreement between two or more persons to pursue a certain course of conduct whose purpose, at least the predominant purpose of that combination, shall be to cause damage and that actual damage must be suffered by the plaintiff as a result of the combination. It is stressed that damages is an essential element of a tort of conspiracy.

Mr. Ng Ek Teong also submitted that as regards the allegation of libel allegedly by reason of the letter written by the 2nd defendant (paragraph 7 of the Statement of Claim) and signed by the 2nd defendant, there was nowhere shown that the 9th defendant was in any way connected with the writing or publication or with the damage alleged.

Again on the question of libel it is further submitted that certain basic facts must be pleaded and the issue must be clear. Mr. Ng cited the case of *Philipps* v. *Philipps & Ors.*[2] to highlight the rule that the Statement of Claim is to state the precise ground of complaint and that "the pleading, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial (as per Bramwell L.J. at page 139). It is also the contention of the applicant that the Statement of Claim insofar as libel is concerned does not in any way connect the 9th defendant. It is merely a claim against him. Mr. Ng cited the case of *Bruce* v. *Odhams Press Ltd.*[3] where at page 706 the observations of Bramwell L.J. and Brett L.J. in *Philipps* v. *Philipps & Ors., supra,* were approved. It was their Lordships' observation that "the object of the rules is threefold. It is that 'the plaintiff may state what his case is for the information of the defendant'." Greer L.J. observed that "may" there ought to read "shall." The Lord Justice then applied the observation of Brett L.J. in *Philipps* v. *Philipps & Ors., supra,* (at pages 133-4) that "the pleadings ought to state every fact upon which they may rely to make out their right of claim."

In his submission Mr. Ng Ek Teong urged the court to strike out the claim on grounds that the particulars do not show the cause of action. He emphasised that Order 19 rule 4 requires every pleading to contain, and contain only, a statement in summary form of the material facts in which the party pleading relies for his claim but not the evidence by which they are to be proved. Mr. Ng Ek Teong contended that the particulars filed by the plaintiff were in fact evidence and the court has to consider the admissibility. Turning to the publication of the particulars in the Sunday Times on June 15 it is the 9th defendant's contention that this was an abuse of the process of the court.

Mr. Wong Weng Kwai submitted that it is not for the court at this point to conduct a trial of the suit. He urged the court, with reference to the pleadings, to look at the reply and particulars contained in the reply. There is, he said, a reasonable cause of action. Mr. Wong, did not, however strenuously dispute that the conspiracy has merged with libel, indeed, he seemed to have conceded that the particulars of conspiracy and particulars of libel overlap. Nevertheless, he referred to Order 19 rule 22 the provisions upon which the plaintiff is relying. Order 19 rule 22 states that —

"wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Provided that where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the plaintiff shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred."

It is the plaintiff's contention that in paragraph 9 of the claim there is allegation of conspiracy to defame but no particulars of malice are pleaded. This, he said, was in compliance with Order 19 rule 22. It is submitted that in the instant case the defendants have pleaded privilege and in her reply the plaintiff gave particulars of the facts and matters from which malice can be inferred.

Mr. Eugene Lye counsel for the 2nd to 8th defendants except the 4th, associated himself with the submission made by counsel for the 9th defendant. As for the particulars he submitted that they mainly contain evidence and should be struck out. He drew my attention to particulars under paragraph 2 of the reply and submitted that they are nothing but evidence relating to express malice. Mr. Eugene Lye urged the court to apply Order 25 rule 4 if the court should hold that conspiracy has merged in tort to defame to strike out particulars relating to conspiracy to defame.

Turning to the amended Statement of Claim as contained in paragraphs 9 and 10 it is contended that without conspiracy there is only libel and to constitute libel there must be publication. Mere allegation of "to publish" or "to cause to be published" does not constitute a cause of action. Mr. Eugene Lye submitted that the question that arises is whether the claim can be cured by amendment. Generally, he said, the court may allow but it should not allow a substitution of a cause of action where there was none. Of the particulars Mr. Eugene Lye said that they referred mainly to the 9th defendant.

Before I proceed to deal with the merits of the application it seems appropriate at this point to make brief reference to the particulars contained in the reply. The particulars filed by the plaintiff are contained in a voluminous bundle consisting of massive allegations relating to irregularities and corrupt practices of members of the Stock Exchange Committee generally and of the 9th defendant in particular. The plaintiff has given accounts of discussions she had with the second defendant at Hilton concerning the corrupt practice of the 9th defendant alleging that the 9th defendant had manoeuvred the printing of the Stock Exchange publication to various printers naming in particular Polygrafic Press Sendirian Berhad of which the 9th defendant allegedly had a vested interest.

Paragraph 3 refers to the same meeting she had with the second defendant and she has set out allegations of abuse of position by the 9th defendant as General Manager and matters relating to corrupt inducement of allotment of shares from companies listed with the Stock Exchange. The plaintiff also speaks of information given by the second defendant of corrupt acceptance of money from a company director as inducement for preferential treatment (paragraph 5). The plaintiff then speaks of pressure upon her to resign from being Research and Publication Manager and a detailed account of what transpired at the meeting on December 13, 1974 (paragraph 6). Detailed accounts of what else transpired at the meeting have also been given (paragraphs 7, 8, 9 and 10).

In paragraph 11 the plaintiff speaks of deliberate suppression of malpractices of members of the committee and has set out various instances (paragraphs 11(a) to (d)). She goes on to deal with complaint concerning the failure of the second defendant's firm

to settle a certain sum to a Singapore broker's firm and the 9th defendant's suppression of the fact (paragraph 12). Paragraph 13 speaks of civil action against the second defendant and subsequent bankruptcy proceedings and other related matters (paragraphs 13, 14, 15, 16 and 17).

The other allegations consist of matters such as failure of the Stock Exchange to circulate defaults and irregularities (paragraph 18); 9th defendant's failure to disclose malpractices and suppression of facts (paragraph 19); condonation of malpractices and corrupt practices (paragraph 20); deliberate lies perpetuated by the 9th defendant (paragraphs 21 and 22); fleecing of funds (paragraph 23); discrepancies in charges and quotations by printers and commissions received and so forth (paragraphs 24 to 48 — a total of 25 paragraphs). The so-called particulars in these paragraphs seems to be nothing but evidence.

Further particulars relate to allegations of mishandling of funds by the 9th defendant. The plaintiff then sets out in minute detail the suggestions she made to curb or eliminate corrupt or irregular practices and the refusal by 2nd to 8th defendants to carry out the proposals (paragraphs 49 and 50).

Paragraphs 51, 52 and 53 would seem to contain evidence of what had transpired between the plaintiff and the second defendant regarding a complaint to Bank Negara of corrupt practices. The plaintiff then repeats the so-called particulars regarding suppression of complaints from the public by the 9th defendant in return for favours (paragraph 54) followed by examples (paragraph 55).

Further particulars relate to a private meeting between the plaintiff and the 3rd defendant stating that the 3rd defendant expressed his annoyance at the 9th defendant's failure to promptly query Faber Merlin Malaysia over certain rights and bonus issues despite request made by the Stock Exchange Singapore and complaints from the public (paragraph 56). She then goes on to refer to certain observations made by the 9th defendant of one of the conditions of her appointment as Research and Publication Manager, namely, that she was not to accept privileges in respect of shares from listed companies, to speculate in the Stock Market and to indulge in insider trading (paragraph 57) — that is the use of confidential information not then available to the general public for purposes of speculation. She proceeds to describe what to her knowledge the 9th defendant regarded as insiders (paragraph 58). The plaintiff then repeats in great detail, allegations concerning corrupt suppression of information and corrupt inducement of allotment of shares (paragraphs 59(a) and (b)).

The plaintiff has also set out an account of another meeting with the 3rd defendant and the remarks made pertaining to an allegation of corrupt inducement for the allotment of shares by the General Manager, Chow Sik Thim, from companies seeking listing (paragraphs 60 and 61) and that the 2nd to 8th defendants were aware of the corrupt practices but failed to take any action against the 9th defendant (paragraph 62) adding that they were aware of the 9th defendant's guilt concerning corrupt practices (paragraph 63). Repeating what she had earlier said the plaintiff stressed that the defendants were aware of the shares obtained by the 9th defendant as General Manager in return for preferential treatment (paragraph 64) and that favours were in the form of shares allotted to the 9th defendant in the names of relatives and nominees in the case of private placements (paragraph 65). In paragraph 66 the plaintiff has set out a total of 19 pages of shares she alleged the 9th defendant accepted. The plaintiff adds that the 9th defendant was aware that she knew of shares obtained in the names of nominees and sold by 9th defendant's sister-in-law Mary Tan with cheques issued to Mary Tan's account and subsequently the spoils were split between Mary Tan and 9th defendant (paragraph 67).

In the following paragraph the plaintiff alleges that the 9th defendant knew she collected full particulars of all transactions for the sale of the shares and she outlines evidence in the following sub-paragraphs — ((a) and (b) of paragraph 68).

In paragraph 69 the plaintiff gives accounts of corrupt allotment of shares. This was followed by allegation of corrupt inducement of various issues of shares (see paragraph 70(a) to (e)). Paragraph 71 sets out allegations concerning inducement in regard to the issue of shares by private placement — ((a) to (e)). More evidence of corrupt inducement of shares were given — (see paragraph 72(a) to (d)). Paragraph 73 alleges that the 9th defendant is in possession of complete documentation of particulars of shares corruptly obtained and the plaintiff repeats allegation that these shares were sold through Mary Tan. The plaintiff goes on to state that 2nd to 8th defendants' attention had been drawn to this fact but she was told to keep tne whole thing quiet — (paragraph 74). The plaintiff also states that 2nd to 8th defendants knew that she had particulars of their own malpractices — (paragraph 75). The plaintiff in conclusion seems to affirm that as Research and Publication Manager she had full control of her department and there was no interference from any of the defendants (paragraph 76) and had during the period published to the satisfaction of the defendants various publications set out in the sub-paragraph (paragraph 77) and none of the defendants had complained of her work (paragraph 78). She contends that it was in the latter part of 1974 that she began to query 2nd to 8th defendants and the 9th defendant concerning the malpractices and irregularities (paragraph 79).

In paragraph 80 the plaintiff says that 2nd to 9th defendants having failed to suppress her complaints to Bank Negara and other government bodies of corrupt practices had conspired with malice to remove her from her position. Lastly she says that the defendants did not honestly believe the truth of the words complained of in paragraph 9 of the Statement of Claim.

The particulars given have run into 61 pages and the plaintiff says that they are particulars of facts and matters from which malice is to be inferred. It is true that a substantial part of the particulars are matters which may properly be set out but the particulars that are clearly evidence and which strictly should not appear therein and ought to be struck out seem to occupy a greater portion of those particulars.

In my view, there is no necessity at all to set out evidence which properly should be adduced at the trial. Furthermore, there is absolutely no necessity whatever to repeat the allegations and to spell out detailed evidence to support those allegations. By so doing the plaintiff enjoys undue advantage of introducing evidence which it is for the trial court to determine in particular in regard to its relevancy and admissibility. It is particularly improper, in the instant case, as not only detailed evidence had been included but the plaintiff had even proceeded thereafter to secure various forms of publicity to gain an undue advantage such that it gives me the distinct impression that the plaintiff was not acting *bona fide* and conceivably is being vexatious and abusing the process of the court. The appearance of the particulars contained in the reply in the New Straits Times, I believe, would not have been possible without the aid of the plaintiff and evidently she had chosen to secure the publication in order to expose the allegations contained in the particulars publicly before trial. Short of being contempt of court her conduct was certainly reprehensible and she cannot be said to have acted *bona fide*.

The point at issue, however, is to determine which particulars should be allowed and which should be struck out. To my mind the plaintiff had only partially complied with the Rules of the Supreme Court. Fundamentally she had gone beyond what is required by the proviso of Order 19 rule 22 particularly in the light of rule 4 which provides that only the material facts must be pleaded but not evidence by which they are to be proved. To my mind, rule 19 would seem to apply the same principle. At this juncture it is not the intention of this court to got into the merits of the particulars with a view to determining their materiality, relevancy and admissibility. This should be done at the trial. Failure to comply with the rule will undoubtedly result in unnecessary delay and expense. In consideration it is my judgment that the particulars contained in the reply shall be struck out and the plaintiff is ordered to file fresh particulars and the onus is on her to ensure strict compliance with Order 19 rule 22.

Turning now to the 9th defendant's application that the claim founded upon conspiracy to defame be struck out I have indeed arrived at a finding that the claim "to conspire to defame" has indeed merged with claim for libel and if I may borrow the words of Denning L.J. in *Ward* v. *Lewis & Ors., supra* at page 11, that "when a tort has been commited ... an allegation of a prior conspiracy to commit the tort adds nothing. The prior agreement merges in the tort." The rest of the observations of Denning L.J. in that case seems to fall squarely upon the point at issue and for these reasons I would to the extent stated herein allow the 9th defendant's application by making an order that the allegations in paragraphs 9 and 10 of the Statement of Claim as to conspiracy to defame be struck out with a further order that the plaintiff is to make the necessary amendments. The defendants represented by counsel before the court are awarded costs of these applications.

Order accordingly.

Solicitors: *Mah-Kok & Din; Eugene Lye & Co.; Ng Ek Teong & Partners.*

PUBLIC PROSECUTOR v. LIM JOO SOON

[R.Cr.J. (Harun J.) March 17, 1978]

[Kuala Lumpur — Criminal Revision No. 2 of 1978]

Customs and Excise — Goods dutiable, uncustomed or prohibited — Burden of proof — Courts of Judicature Act, 1964, s. 35 — Customs Act, 1967, ss. 3(3), 17, 22, 121, 135 (1)(d) & (2), 143.

In this case the defendant was charged with refusing to meet the demand for payment of duty in respect of cast iron gate valves. The issue was whether the cast iron gate valves were dutiable. The prosecution relied on a notification by the Director-General to the Senior Superintendent of Customs that the article was dutiable.

Held: the notification in this case was not a certificate and even if it was it was not conclusive evidence that the goods were dutiable nor did it raise a presumption that the goods were dutiable;

(2) in customs cases, the burden of proof that the goods are dutiable, uncustomed or prohibited is on the prosecution. In appropriate cases, the prosecution may rely on the presumption that the goods shall be deemed to be dutiable, uncustomed or prohibited to the knowledge of the defendant. In all cases the defendant is at liberty to prove either during the case for the prosecution or in the course of the defence that the goods are not dutiable, uncustomed or prohibited as the case may be.

Cases referred to:-

(1) *Tan Seng Tin* v. *Public Prosecutor* [1970] 1 M.L.J. 100.

(2) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 W.L.R. 163.

(3) *Saminathan & Ors.* v. *Public Prosecutor* [1955] M.L.J. 121 at 124.

(4) *Public Prosecutor* v. *Ng Fah* [1954] M.L.J. 150.

CRIMINAL REVISION.

Raja Abdul Aziz Addruse for the applicant.

Shaari Mohamed Noor for the respondent (Public Prosecutor).

Harun J.: This is an application by the defence under section 35 of the Courts of Judicature Act, 1964.

The facts at the close of the case for the prosecution are as follows:

The defendant represents a company which is an importer of Cast Iron Gate Valves. Between November 1973 and June 1975 the defendant imported quantities of Cast Iron Gate Valves through Johor Bahru and did not pay duty on them. Between December 1973 and March 1974 the defendant also imported the same type of valves through Port Kelang but paid duty on them.

According to the Customs Duties Order, 1968, issued under section 11 of the Customs Act, 1967, iron valves are generally not dutiable except:

"manually operated sluice valves with inlet or outlet of an internal diameter exceeding 2" but not exceeding 16"."

Dutiable iron valves are classified under Tariff Code 84.61. 110; and non-dutiable iron valves are classified under Tariff Code 84.61. 190.

In November 1974, the Customs discovered the discrepancy between Port Kelang and Johor Bahru. It appeared that the type of iron valves imported by the defendant was also being imported by three other companies through Johor Bahru and in all cases the goods were classified under Tariff Code 84.61. 190 so